



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159241

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly calculated Petitioner's FS benefit effective August 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner's household size is 1.
2. Petitioner's monthly gross income is \$804.78 in social security.

3. Petitioner monthly rent is \$228. Petitioner lives in subsidized housing and Petitioner's utilities are included in his monthly rent.
4. On July 7, 2014 the agency sent Petitioner a notice that his monthly FS benefit was reduced from \$97.00 to \$15.00 effective August 1, 2014.
5. On July 23, 2014 the Division of Hearings and Appeals received a request for fair hearing from Petitioner challenging the reduction in his monthly FS benefit. He believed that the reduction was the result of a clerical error.

DISCUSSION

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 1 is \$152, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

Following these rules the petitioner's FS benefits calculations effective August 1, 2014 were as follows. Petitioner's gross income for August 2014 was \$804.78 from SSI. From Petitioner's gross income of \$804.78 the agency subtracted the standard deduction of \$152, giving Petitioner an adjusted income \$652.78. Petitioner did not receive an excess shelter deduction as his shelter expenses of \$228 in rent were less than 50% of his adjusted income.

Thus, the August 2014 allotment calculation correctly looked like this:

Gross income	804.78
Minus Earned Inc. Deduction	-000.00
Minus Excess Medical	-000.00
Minus Dependent Care	-000.00
Minus Standard Deduction	-152.00
Adjusted Income	652.78
Minus Shelter Deduction	<u>-000.00</u>
Net Income	652.78

The correct allotment for a household of one with net income of \$652.78 was \$15.00 in August 2014. *FS Wisconsin Handbook*, 8.1.2, p.6.

Previously Petitioner received an excess shelter deduction because everyone receiving food shares qualified for the \$450 Heating Standard Utility Allowance. It did matter whether or not the person was responsible for his or her utilities. The Wisconsin Department of Administration (DOA) issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance (HSUA) of \$450.

The 2014 Farm Bill changed Wisconsin's practice of allowing all FS households to take the maximum utility allowance. The 2014 Farm Bill requires a household to have a received a WHEAP or energy assistance payment of greater than \$20 to receive the HSUA of \$450. 7 U.S.C. 2014(e)(6)(C)(ii)(I)

Therefore, “households that have not received WHEAP will receive the appropriate utility standard based on the utility obligation(s) incurred by the household.” *DHS Operations Memo 14-16 Amended*.

In this case Petitioner did not receive WHEAP and his only monthly utility obligation is a phone. Petitioner did not report that he paid for a phone until the hearing on August 19; however, this allowable expense of \$30.00 would not have changed Petitioner’s monthly FS benefit. Petitioner provided his 2013 homestead deduction to show that a portion of his rent is actually paid for utilities. I note that if a portion of his rent was for utilities, then he could deduct less in rent, and more in utilities, but no more than his actual monthly expenses of \$228. However, this is not the case. The homestead credit on line 5b states heat was included in the rent. In addition, the utilities section at the bottom is listed at 0. Petitioner has circled line 14a, which allows for an additional tax deduction when heat is included in rent. This does not pertain to the FS benefit calculations.

CONCLUSIONS OF LAW

I conclude that Petitioner’s utilities are included in his rent and that he does not qualify for any additional utility deduction with the exception of the \$30.00 phone allotment. I do find that Petitioner pays for a phone and qualifies for the \$30 phone allotment; however, this does not change his monthly FS benefit of \$15. The agency should include the phone expense as a utility deduction moving forward.

THEREFORE, it is

ORDERED

That the petitioner is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

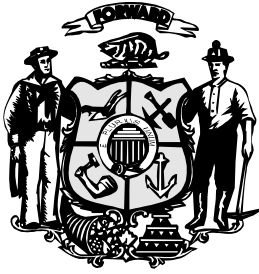
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of August, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 20, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability